

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Amendment of Section 73.606(b)
Table of Allotments
Television Broadcast Stations.
(Gainesville, Florida

MB Docket No
RM-10852

RECEIVED
No. 6034

APR 12 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Gainesville Channel 61 Associates, LLC (“GCA”) filed a petition for rulemaking on July 14, 2000, to substitute and allot NTSC channel 29 for its originally proposed NTSC channel 61+ in Gainesville, Florida. The Commission released a Notice of Proposed Rule Making seeking comments on this proposed change to the TV Table of Allotments on February 20, 2004

Post-Newsweek Stations Orlando, Inc, (“Post-Newsweek”) is licensee of WKMG-TV (Ch. 6, CBS) in Orlando, Florida, and W29AB, a translator licensed to Ocala, Florida, in Marion County (“Channel 29”). Post-Newsweek files these comments in opposition to the amendment to the TV Table of Allotments proposed in the above-captioned rulemaking. A full power analog station broadcasting over channel 29 from Gainesville would force WKMG’s translator to cease its service to the Marion County community.

No. of Copies rec'd
List ABCDE

I. The Marion County Community Benefits From WKMG Programming Over Channel 29.

Channel 29 has been serving Marion County for more than twenty years as a low power translator. For the past eight years, Channel 29 has been broadcasting the programming of WKMG (formerly WCPX). More than 50,000 households now receive WKMG's programming over Channel 29. Channel 29 is the only over-the-air source of CBS network programming for roughly half of Marion County.

Channel 29 permits WKMG to provide important, public interest programming to residents of Marion County. Besides providing CBS network programming, WKMG broadcasts four and a half hours of local news programming daily during the week, four hours on the weekend, and a thirty minute public affairs program called "Flash Point," which covers local affairs. In addition, WKMG provides important weather alert information specific to Marion County during the storm seasons.

The broadcasts provided by WKMG through Channel 29 are important services for the residents of Marion County. Those services would be lost through the allocation of a new NTSC station on channel 29 in Gainesville.

II. Petitioners Had An Obligation To Consider Channels That Would Not Displace Existing Low Power Service.

GCA filed its petition for rulemaking pursuant to the Commission's November 22, 1999 Public Notice.¹ The Public Notice announced a window filing opportunity to allow, among others, persons with pending requests for new NTSC television stations to modify their

¹ Public Notice, DA 99-2605, 14 FCC Rcd 19559 (rel. Nov. 22, 1999) ("Public Notice").

requests for spectrum from “out-of-core” channels to channels within the core.² The Public Notice placed an explicit procedural requirement on petitioners who are modifying their petitions for a new allotment. Specifically, “they should consider, to the extent possible, authorized LPTV and TV translator stations ”³

This requirement is consistent with the Commission’s policy to preserve, whenever possible, existing service. The Commission has taken a number of steps designed specifically to maintain existing low power service.⁴ The policy is evident in the displacement rule, which provides relief to low power service providers displaced by either analog services moving in core or new digital service.⁵ The rules give priority to existing, displaced low power service providers over previously submitted applications for new low power service.

Despite the clear command found in the Public Notice for petitioners modifying their applications for new service, such as GCA, to consider existing, authorized LPTV and translator stations, there is no evidence GCA made any effort to accommodate or consider the existing service provided to Marion County through Channel 29. Indeed, the petition makes no mention of the impact on Channel 29. The petition for rulemaking is therefore procedurally flawed and no decision granting GCA’s request to allot channel 29 in place of channel 61 should issue unless GCA makes the showing required by the Public Notice.

² The Commission has announced that it will not authorize additional new analog full power stations on Channels 60-69. *In re Reallocation of Television Channels 60-69, The 746-806 MHz Band*, ET Docket No. 97-157, Report and Order, 12 FCC Rcd 22,953, 22,971 (rel. Jan. 6, 1998).

³ Public Notice at 5

⁴ See, e.g., *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (rel. Feb. 23, 1998), ¶¶ 96-128.

⁵ See 47 C F R § 73.3572.

III. Acting on GCA's Petition Now Does Not Serve The Public Interest.

GCA seeks an amendment to the TV Table of Allotments to provide it with an analog station within the core that would displace existing, albeit low power, service. The public interest does not support displacing existing service with an analog channel at this stage in the transition. The Commission's goals in the digital transition are to promote the delivery of digital services as soon as possible while preserving existing services—not to create additional analog stations. Granting the amendment to the TV Table of Allotments for a full power station to operate as proposed would displace Channel 29 and cut off service to Marion County residents. The Commission has given no guarantee that stations with pending applications for out-of-core channels will be given an in-core channel, and in this case the public interest weighs against it.

The Commission is currently considering the deadline and procedures for stations with two in-core channels—one analog and one digital—to make their ultimate DTV channel elections.⁶ The channel election process is crucial because, as the Commission has noted, it will free up the spectrum necessary to move out-of-core NTSC and DTV channels in-core. After channels are elected and analog spectrum is returned, knowledge of what spectrum is available will enable out-of-core channels and “other users” to determine on a market-by-market basis what channel allotments to request.⁷ This will help applicants, such as GCA, consider existing

⁶ See *In re Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Notice of Proposed Rule Making, 18 FCC Rcd 1279, 1287-88 (rel. Jan. 27, 2003) (“*Second Periodic Review NPRM*”), ¶ 25.

⁷ See *In re Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 5946, 5952 (rel. Jan. 19, 2001).

low power service, as required by the Public Notice, and request a DTV channel that does not displace existing service.

The Commission should reject at this time GCA's request to allot channel 29 in place of channel 61+ in Gainesville, Florida, that would displace existing service. The public interest benefit of not amending the Table at this time far outweighs the costs. When the Commission decides on a channel election time frame for existing full power stations, it will aid the Commission and applicants for proposed new stations seeking in-core allotments in finding a suitable channel. If GCA can then find a channel that will not displace existing service, it will impose only a minimum burden on GCA and the public; conversely, if the Table is amended now and Channel 29 is displaced, the disruption of service will be to the detriment of Marion County residents and unnecessarily burdensome to Post-Newsweek.

We recognize that TV translators operate as a secondary service subject to displacement. Nonetheless, the Commission has an obligation in any proposed change to the TV Table of Allotments to consider the public interest. In this case, granting an amendment to the Table would displace existing service in favor of a new, unconstructed station. When the Commission issued the Public Notice, it clearly recognized the value of maintaining existing service.

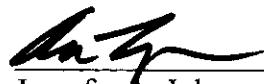
IV. Conclusion

The petition for rulemaking filed by GCA does not comply with its procedural obligations. By not considering the impact on existing low power service on Channel 29 in Marion County, GCA's proposed rulemaking may unnecessarily displace existing service that provides local news and emergency weather, as well as the only CBS service for most of Marion County. The Commission should dismiss the rulemaking not only for these reasons, but because it is in the public interest not to allocate a new analog service that will displace existing service.

until after the channel election process is complete. At that time, the Commission and petitioners will know what in-core spectrum will be available for new service

Respectfully submitted,

POST-NEWSWEEK STATIONS
ORLANDO, INC.



Jennifer A. Johnson

Aaron Cooper

COVINGTON & BURLING

1201 Pennsylvania Ave., NW

Washington, D.C. 20004

Phone: (202) 662-6000

Fax: (202) 662-6291

Its Counsel

CERTIFICATE OF SERVICE

I, Aaron Cooper, do hereby certify that one copy of the foregoing Comments of Post-Newsweek Stations Orlando, Inc., were served this 12th day of April, 2004, by first-class mail, postage pre-paid, as follows:

David D. Oxenford
Shaw Pittman
2300 N Street, NW
Washington, DC 20037-1128
(Counsel for Gainesville Channel 61 Associates, LLC)



Aaron Cooper